

WC - 03-125

DOCKET FILE COPY ORIGINAL



# SWIDLER BERLIN SHEREFF FRIEDMAN, LLP

THE WASHINGTON HARBOUR  
3000 K STREET, NW, SUITE 300  
WASHINGTON, DC 20007-51

TELEPHONE (202) 424-7500

FAX (202) 424-7645

WWW.SWIDLAW.COM

FCC/MELLON

MAY 08 2003

NEW YORK OFFICE  
THE CHRYSLER BUILDING  
405 LEXINGTON AVENUE  
NEW YORK, NY 10174  
(212) 973-0111 FAX (212) 891-9598

May 8, 2003

## VIA COURIER

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
P.O. Box 358145  
Pittsburgh, PA 15251-5145

Re: Application of Universal Access, Inc. and CityNet Telecommunications, Inc.  
For Section 214 Authority - Domestic

Dear Ms. Dortch:

On behalf of Universal Access, Inc. and CityNet Telecommunications, Inc., please find an original and six (6) copies of an application for Commission approval to transfer control of Universal Access to CityNet. Concurrent with this application, the Parties are also filing an application for Commission approval of the transfer of control with respect to Universal Access' international Section 214 authorizations.

Enclosed, please find a check in the amount of \$860.00 to cover the Commission's filing fee. Please date-stamp the enclosed extra copy of this filing and return it in the envelope provided. Please direct any questions regarding this filing to the undersigned.

Respectfully submitted,

Russell M. Blau  
Harry N. Malone

Counsel for Universal Access, Inc.

Enclosure

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

\_\_\_\_\_  
Joint Application of )

**Universal Access, Inc.** )

and )

**CityNet Telecommunications, Inc.** )

Application for Authority Pursuant to )  
Section 214 of the Communications Act of 1934, )  
As Amended, to Transfer of Control )  
of Authorized U.S. Domestic Carrier )  
\_\_\_\_\_)

**File No.** \_\_\_\_\_

**APPLICATION**

**I. Introduction**

**A. Summary of the Transaction**

Universal Access, Inc. ("Universal Access") and CityNet Telecommunications, Inc. ("CityNet") (collectively "Applicants"), by and through undersigned counsel and pursuant to Section 214 of the Communications Act of 1934, as amended, 47 U.S.C. § 214 (1982) (the "Act"), and Sections 63.04 of the Commission's Rules, 47 C.F.R. § 63.04 (2000), hereby request that the Commission grant such authority as may be necessary or required to permit Applicants to consummate a Transaction through which CityNet will acquire indirect control of Universal Access (the "Transaction").

**B. Request for Expedited Consideration**

Applicants emphasize that following the completion of the proposed Transaction, customers of Universal Access will continue to receive service under the same rates, terms and conditions as that service is currently being provided. Accordingly, Applicants respectfully request that the Commission approve this Application expeditiously in order to allow Applicants to consummate the proposed Transaction as soon as possible.

**C. Application Eligible for Streamlined Processing**

Applicants respectfully submit that this Application is eligible for streamlined processing pursuant to Section 63.03 of the Commission's Rules, 47 C.F.R. § 63.03. With respect to domestic authority, this Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because, immediately following the Transaction, (1) CityNet and Universal Access and their affiliates combined will hold less than a ten percent (10%) share of the interstate, interexchange market; (2) CityNet and Universal Access and their affiliates will provide local exchange service, if at all, only in areas served by dominant local exchange carriers (none of which are parties to the proposed Transaction) and; (3) none of the Applicants or their affiliates are dominant with respect to any service.

In support of this Application, Applicants provide the following information:

**II. Description of the Applicants**

**A. CityNet Telecommunications, Inc. ("CityNet")**

CityNet is a privately-held Delaware corporation headquartered in Silver Spring, Maryland. Since beginning operations in 2000, sixteen city governments across the U.S. and two in Europe have granted CityNet the right to build dark fiber networks and point-to-point dark fiber

connections. These networks are typically constructed in the applicable city's sewer systems and water mains.

**B. Universal Access**

Universal Access is a telecommunications carrier authorized to provide telecommunications services by the Federal Communications Commission and the public utility commissions of 46 states and the District of Columbia. Universal Access is authorized to provide Global or Limited Global Facilities-Based and Resale Service pursuant to the Commission's grant in File No. ITC-214-19990811-00546, dated September 17, 1999.

Universal Access provides telecommunications carriers and Internet service providers with dedicated transport circuits to meet bandwidth demand and cross-connects the networks of various telecommunications carriers. Universal Access, a Delaware corporation, also provides private line and interconnection services.

Universal Access is a wholly-owned subsidiary of Universal Access Global Holdings, Inc. ("UAXS"). UAXS is a publicly-traded Delaware corporation with principal offices in Chicago, Illinois. UAXS does not have any telecommunications regulatory licenses from this or any other telecommunications regulatory agency.

**III. Information Required by Section 63.04**

- (1) The names, addresses and telephone numbers of the Applicants:

Transferor: Universal Access Global Holdings, Inc.  
223 S. Wacker Drive, Suite 600  
Chicago, Illinois 60606  
Tel.: (312) 660-5064  
Fax: (312) 660-1290

Transferee: CityNet Telecommunications, Inc.  
8405 Colesville Road, 6th Floor  
Silver Spring, Maryland 20910  
Tel.: (301) 608-4013  
Fax: (301) 608-8121

(2) Jurisdiction of organization for each of the Applicants:

Transferor: UAXS is a corporation formed under the laws of the State of Delaware.

Transferee: CityNet is a corporation organized under the laws of the State of Delaware.

(3) Correspondence concerning this Application should be sent to:

Russell M. Blau  
Harry N. Malone  
Swidler Berlin Shereff Friedman, LLP  
3000 K Street, NW, Suite 300  
Washington, D.C. 20007  
Tel.: (202) 424-7705  
Fax: (202) 424-7645

with a copy to:

Scott Fehlan  
General Counsel  
Universal Access Global Holdings Inc.  
223 S. Wacker Drive, Suite 600  
Chicago, Illinois 60606  
Tel.: (312) 660-5064  
Fax: (312) 660-1290

and

CityNet Telecommunications, Inc.  
8405 Colesville Road, 6th Floor  
Silver Spring, Maryland 20910  
Attention: Edward Frantz  
Tel.: (301) 608-4013  
Fax: (301) 608-8121

with a copy to:

McDermott, Will & Emery  
50 Rockefeller Plaza  
New York, NY 10020  
Attention: Mark Selinger  
Tel.: (212) 547-5400  
Fax: (212) 547-5444

- (4) Information concerning the ten percent (10%) or greater shareholders of transferee is as follows:

The following entity owns 21% of **CityNet Telecommunications**:

Name: Telecom Partners III, L.P.  
Address: 4600 South Syracuse Street, Suite 1000  
Denver, Colorado 80237  
Citizenship: USA  
Percentage Owned: 21%  
Principal Business: Telecommunications

The following entity is the General Partner of **Telecom Partners III, L.P.**

Name: Telecom Mgmt III, L.L.C.  
Address: 4600 South Syracuse Street, Suite 1000  
Denver, Colorado 80237  
Citizenship: USA  
Percentage Owned: N/A  
Principal Business: Telecommunications

There is no entity that owns 10% or more of **Telecom Mgmt III, L.L.C.**

The following entity owns 14.6% of **CityNet Telecommunications**:

Name: Crescendo IV, L.P.  
Address: 800 LaSalle Avenue, Suite 2250  
Minneapolis, Minnesota 55402  
Citizenship: USA  
Percentage Owned: 14.6%  
Principal Business: Telecommunications

The following entity is the General Partner of **Crescendo IV, L.P.**

Name: Crescendo Ventures IV, L.L.C.  
Address: 800 LaSalle Avenue, Suite 2250  
Minneapolis, Minnesota 55402  
Citizenship: USA  
Percentage Owned: N/A  
Principal Business: Telecommunications

There is no entity that owns 10% or more of **Crescendo Ventures IV, L.L.C.**

No other entity holds, or after the Transaction will hold, a 10% or greater direct or indirect interest in CityNet.

CityNet currently has no interlocking directorates with a foreign carrier.

- (5) CityNet certifies, pursuant to Sections 1.2001 through 1.2003 of the Commission's Rules (implementing the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 3301), that it is not subject to a denial of Federal benefits pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.
- (6) Applicant request Commission approval for the proposed transaction that will result in CityNet acquiring a 55% ownership interest in UAXS. The transaction includes an acquisition of previously unissued shares of UAXS's common stock that will total 55% of the outstanding common stock on a fully-diluted basis (with any options and warrants having an exercise price in excess of \$1.00 being excluded from the calculation of "fully outstanding," subject to CityNet's right to receive compensating shares in the event that any of these options or warrants are subsequently exercised).<sup>1</sup>

The transaction will result in CityNet holding a controlling ownership interest in UAXS and, thus, indirectly, in Universal Access. Universal Access emphasizes that the transfer of control described herein will not involve a change in the name under which Universal Access currently operates nor any change in the manner in which Universal Access currently offers service. Immediately following the proposed transaction, Universal Access will continue to offer the services it currently offers with no change in the rates, terms, or conditions of service. Thus, the transfer of control to CityNet will be transparent to Universal Access's customers in regards to the service they receive. A chart showing this transaction is attached hereto as Exhibit A.

Applicant respectfully requests Commission approval for the transfer of controlling interest in UAXS to CityNet as described above.

- (7) Universal Access offers interstate long distance on a nationwide basis. (CityNet does not provide domestic telecommunications services and does not hold domestic Section 214 authority.)
- (8) This Application is eligible for streamlined processing pursuant to Section 63.03(b)(2)(i) because following the Transaction, CityNet and its affiliates will hold less than a ten percent (10%) share of the interstate, interexchange market

---

<sup>1</sup> In addition to paying UAXS \$16 million, (a) CityNet will transfer to Universal Access ownership of certain fiber optic network assets located in Indianapolis, Indiana and Albuquerque, New Mexico and (b) Universal Access will assume a \$2 million debt obligation to a third party.

and none of the Applicants or their affiliates are dominant with respect to any service.

- (9) An application pursuant to Section 214 of the Communications Act is being filed concurrently with the International Bureau.
- (10) Applicants request expeditious processing of this Application to permit the proposed Transaction to be completed as rapidly as possible.
- (11) Not applicable.
- (12) The proposed transaction will serve the public interest in promoting competition among telecommunications carriers by providing Universal Access with the opportunity to strengthen its competitive position by strengthening its balance sheet and gaining access to CityNet's business and managerial expertise. The enhanced liquidity provided by the transactions will significantly enhance Universal Access's operational flexibility and efficiency as well as its long-term financial viability. The proposed transactions will directly benefit consumers by ensuring the continued provision of innovative, high-quality telecommunications services to the public and thereby promoting competition in the telecommunications service market.



**VII. Conclusion**

For the reasons stated above, Applicants respectfully submit that the public interest, convenience, and necessity would be furthered by a grant of this Application. Applicants respectfully request expeditious consideration of this Application to permit Applicants to consummate the Transaction as soon as possible.

Respectfully submitted,

By: 

Russell M. Blau

Harry N. Malone

Swidler Berlin Shereff Friedman, LLP

3000 K Street, NW, Suite 300

Washington, DC 20007-5116

(202) 424-7705 (Tel)

(202) 424-7645 (Fax)

COUNSEL FOR UNIVERSAL ACCESS, INC.

Dated: May 8, 2003

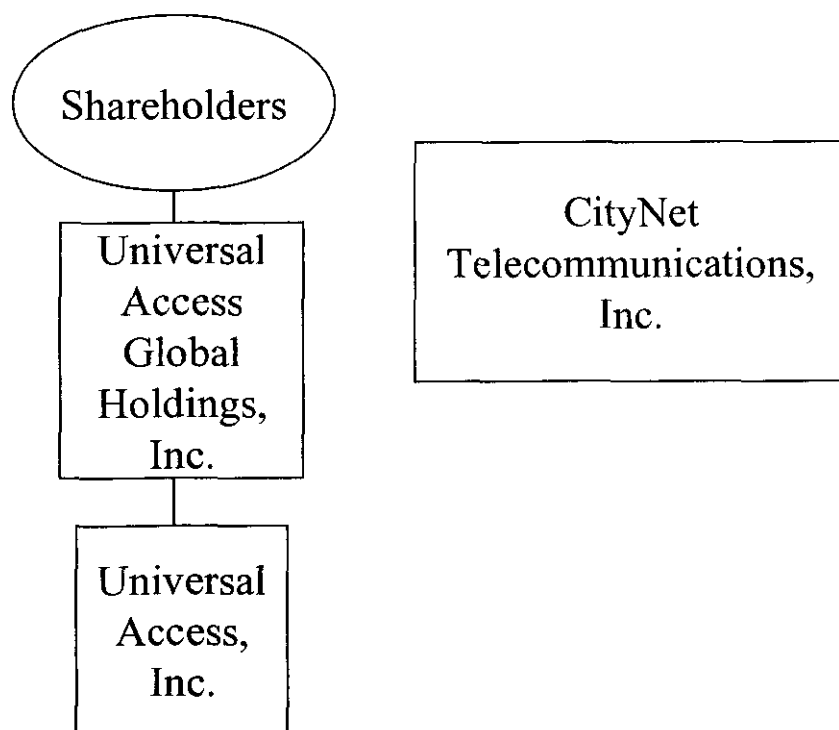
**Exhibit A**

**Illustrative Chart**

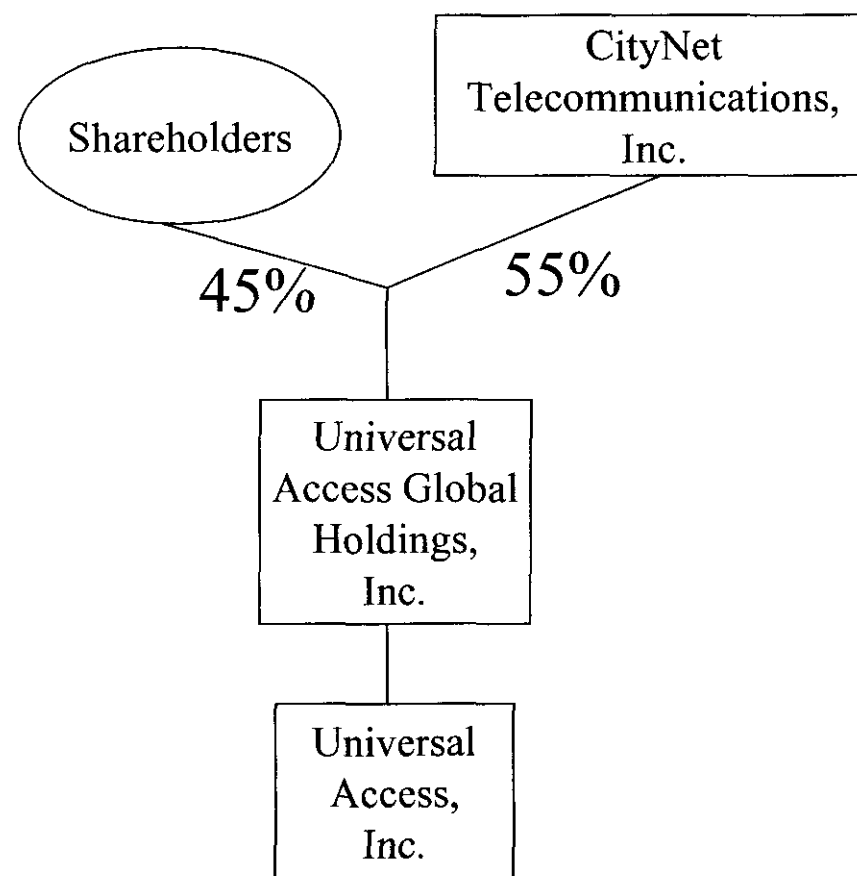
# Exhibit A

## UNIVERSAL ACCESS CITYNET STOCK PURCHASE

### PRE-TRANSACTION



### POST-TRANSACTION



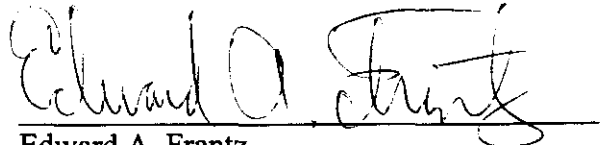
## **Verifications**

421788v1

**VERIFICATION**

STATE OF MARYLAND :  
: ss.  
COUNTY OF MONTGOMERY :

I, Edward A. Frantz, declare under penalty of perjury that I am authorized to make this verification on behalf of CityNet Telecommunications, Inc., a party in the foregoing filing, that I have read the foregoing information and know the contents thereof, and that the contents of the foregoing filing are true and correct to the best of my knowledge, information, and belief.



Edward A. Frantz  
Senior Vice President & General Counsel  
CityNet Telecommunications, Inc.

Sworn and subscribed before me this 17th day of April 2003.

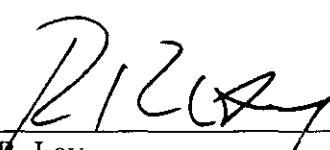
  
Signature of official administering oath

My commission expires: \_\_\_\_\_

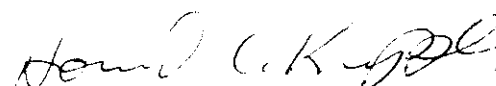
# VERIFICATION

STATE OF ILLINOIS :  
: ss.  
COUNTY OF COOK :

I, Randall R. Lay, declare under penalty of perjury that I am authorized to make this verification on behalf of Universal Access Global Holdings Inc., the parent of Universal Access, Inc., a party in the foregoing filing, that I have read the foregoing information and know the contents thereof, and that the contents of the foregoing filing are true and correct to the best of my knowledge, information, and belief.

  
\_\_\_\_\_  
Randall R. Lay  
Chief Financial Officer  
Universal Access Global Holdings Inc.

Sworn and subscribed before me this 17<sup>th</sup> day of April 2003.

  
\_\_\_\_\_  
Signature of official administering oath

My commission expires: 4/23/05

